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Preparatory Commission for the International Criminal Court

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Draft report of the Preparatory Commission for the International Criminal Court

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Introduction

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, and from 13 to 31 March and 12 to 30 June 2000, in accordance with General Assembly resolutions 53/105 of 8 December 1998 and 54/105 of 9 December 1999.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and other States which were invited to participate in the Conference.

3. Under paragraph 4 of General Assembly resolution 53/105 and paragraph 3 of resolution 54/105, the Secretary-General was requested to convene the Preparatory Commission, in accordance with resolution F of the Conference, from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, and from 13 to 31 March, 12 to 30 June and 27 November to 8 December 2000, to carry out the mandate of those resolutions and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 6 of General Assembly resolution 53/105 and paragraph 5 of resolution 54/105, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Preparatory Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the international tribunals for the former Yugoslavia and for Rwanda.

5. Under paragraph 7 of General Assembly resolution 53/105 and paragraph 6 of resolution 54/105, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the Commission, receiving copies of the official documents and making available their materials to delegates.

6. The session was opened by the Secretary-General of the United Nations, Mr. Kofi Annan, and by the Under-Secretary-General, the Legal Counsel, Mr. Hans Corell, both of whom made statements.

7. At its 1st and 2nd meetings, on 16 and 22 February 1999, the Preparatory Commission elected its Bureau, as follows:

Chairperson:

Mr. Philippe Kirsch (Canada)

Vice-Chairpersons:

Mr. George Winston McKenzie (Trinidad and Tobago)

Mr. Medard R. Rwelamira (South Africa)

Mr. Muhamed Sacirbey (Bosnia and Herzegovina)

Rapporteur:

Mr. Salah Suheimat (Jordan)

8. Mr. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Preparatory Commission. Mr. Manuel Rama-Montaldo, Deputy Director of the Codification Division, acted as Deputy Secretary of the Commission and Secretary of the Working Groups on Rules of Procedure and Evidence. Ms. Mahnoush H. Arsanjani, Senior Legal Officer, acted as Secretary of the Working Group on Elements of Crimes. The following members of the Codification Division also provided substantive servicing to the Commission: Ms. Christiane Bourloyannis-Vrailas, Mr. George Korontzis, Ms. Virginia Morris, Mr. Trevor Chimimba, Mr. Renan Villacis, Ms. Ruth Khalastchi and Mr. Arnold Pronto.

9. At its 1st meeting, on 16 February 1999, the Preparatory Commission adopted the following agenda (PCNICC/1999/L.1):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.

4. Organization of work.

5. Implementation of resolution F of the Final Act of the United Nations Diplomatic Conference of Plenipoteniaries on the Establishment of an International Criminal Court, adopted on 17 July 1998, and paragraph 4 of General Assembly resolution 53/105 of 8 December 1998.

6. Adoption of the report.

10. Also at its 1st meeting, the Preparatory Commission agreed that its rules of procedure were the rules of procedure of the General Assembly as applied to the Main Committees together with paragraphs 6 and 7 of General Assembly resolution 53/105.

11. Taking account of the priorities set forth by resolution F of the Conference, the Preparatory Commission's work plan for its first to fifth sessions focused on two essential instruments necessary for the functioning of the Court and for which the Commission had to prepare finalized draft texts before 30 June 2000 in accordance with that resolution: the Rules of Procedure and Evidence, and the Elements of Crimes.

12. In order to facilitate the tasks of the Preparatory Commission with regard to the Rules and Procedure and Evidence and the Elements of Crimes, the Chairman, in consultation with the Bureau, designated the following coordinators:

- Mr. Herman von Hebel (Netherlands) for the Elements of Crimes;
- Ms. Silvia Fernandez de Gurmendi (Argentina) for the Rules of Procedure and Evidence;
- Mr. Medard R. Rwelamira (South Africa) for the Rules of Procedure and Evidence relating to Part 4 (Composition and Administration of the Court) of the Statute;
- Mr. Rolf Fife (Norway) for the Rules of Procedure and Evidence relating to Part 7 (Penalties) of the Statute;
- Mr. Phakiso Mochochoko (Lesotho) for the Rules of Procedure and Evidence relating to Part 9 (International Cooperation and Judicial Assistance) and Part 10 (Enforcement) of the Statute.

13. During its first, second, third and fourth sessions, the Preparatory Commission took note of the oral reports of the coordinators for the Rules of Procedure and Evidence and for the Elements of Crimes at its 3rd meeting, on 26 February 1999, its 8th meeting, on 13 August 1999, its 12th meeting, on 17 December 1999, and its 16th meeting, on 31 March 2000.

14. At its fifth session at the 23rd meeting, on 30 June 2000, the coordinators introduced the reports of the Working Group on Rules of Procedure and Evidence and the Working Group on Elements of Crimes (PCNICC/2000/WGRPE/... and PCNICC/2000/WGEC/L.1 and Add.1 and Add.2).

15. At the same meeting, the Preparatory Commission adopted its report containing the finalized draft texts of the Rules of Procedure and Evidence and the Elements of Crimes in accordance with paragraphs 5 and 6 of resolution F of the Conference. The Preparatory Commission also requested the Secretariat to prepare a consolidated version of the texts.

16. In order to ensure linguistic consistency among the various language versions, the Preparatory Commission at its fifth session, at the 22nd meeting, on 28 June 2000, agreed to allow delegations to submit only linguistic corrections to the Secretariat no later than 15 October 2000 to be incorporated in the report.

17. The Preparatory Commission was addressed by Judge Gabrielle Kirk McDonald, President of the International Tribunal for the Former Yugoslavia, at its 5th meeting, on 30 July 1999; by Judge Richard George May of the International Tribunal for the Former Yugoslavia, at its 14th meeting, on 20 March 2000; by Mr. Olara Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, at its 16th meeting, on 31 March 2000; by Judge Navanethem Pillay and Judge Erik Møse, the President and Vice-President of the International Criminal Tribunal for Rwanda, respectively, at its 17th meeting, on 12 June 2000; and by Judge Claude Jorda, President of the International Tribunal for the Former Yugoslavia, at its 19th meeting, on 19 June 2000.

18. The Preparatory Commission took note of the Intergovernmental Regional Caribbean Conference for the signature and ratification of the Rome Statute of the International Criminal Court hosted by the Ministry of the Attorney General of Trinidad and Tobago and the No Peace Without Justice Foundation, in Port-of-Spain from 15 to 17 March 1999, as well as the Port-of-Spain Declaration resulting therefrom; the international seminar on victims' access to the International Criminal Court hosted by the Government of France in

Paris from 27 to 29 April 1999; the informal inter-sessional meeting hosted by the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, from 21 to 27 June 1999; the two briefing sessions on ratification and implementation legislation of the Rome Statute, hosted by the International Human Rights Law Institute of DePaul University and Parliamentarians for Global Action at United Nations Headquarters in New York on 31 July and 7 August 1999; the informal inter-sessional meeting hosted by the Government of Italy and the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, from 31 January to 6 February 2000; and the inter-sessional meeting of the coordinators and sub-coordinators dealing with the Rules of Procedure and Evidence hosted by the Government of Canada in Mont-Tremblant from 30 April to 5 May 2000.

19. The Preparatory Commission also noted with satisfaction that, during its first to fifth sessions, a total of 72 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105, had been established to facilitate the participation of the least developed countries in the work of the Commission. The Preparatory Commission expressed its appreciation to the Holy See, Norway and the United Kingdom of Great Britain and Northern Ireland for their contributions to the trust fund, as well as to the International Human Rights Law Institute of DePaul University, which had provided accommodation for some of the delegates from the least developed countries.

20. The list of documents relating to the Rules of Procedure and Evidence and the Elements of Crimes issued at the first to fifth sessions of the Preparatory Commission, held in 1999 and 2000, is contained in the annex to the present report.